IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2859 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI MOHANBHAI MARWADI

Versus

POLICE COMMISSIONER AHMEDABAD

Appearance:

1. Special Civil Application No. 2859 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS NANDINI V. JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has

challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City dated 3rd September, 2002 in exercise of powers vested under him by Sub-Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') branding the petitioner-detenu as dangerous person within the meaning of Section 2(c) of the PASA Act.

2. The petitioner has challenged the legality and validity of the order of detention mainly on the ground that the order passed by the authority suffers from various infirmities and requires to be quashed. It is submitted that the petitioner has wrongly been branded as dangerous person. The learned counsel appearing for the petitioner has taken me through the various grounds taken by the petitioner in the memo of petition. While recording subjective satisfaction, the Police Commissioner, Ahmedabad City has considered the fact of registration of 6 criminal offences registered with Ahmedabad Railway police station between 5th May 2002 to 5th August 2002. All offences are punishable under Section 379 and Section 114 of IPC. The table of cases mentioned in the grounds of detention which is at page 14 is relevant and I would like to reproduce the same as under:

			Loss	Recovery
1.	Ahmedabad Railway 25.5.2002	IPC 379 114	Mobile Phone Suitcase & Papers Rs.6000 Seized on 20.8.02	Mobile Phone & other articles Rs.6000
2.	Ahmedabad 102/2002 2.6.2002	-do-	Bag & Clothes Rs.1850	Cash Rs.600 Seized on 20.8.02
3.	Ahmedanad 129/2002 4.7.2002	-do-	Mobile Phone & Cash & other articles Rs.10500 Seized on 20.8.02	Mobile Phone & Bag and other articles Rs.5160
4.	Ahmedabad 131/2002 5.7.2002	-do	Bag, Clothes, Spectacles, & other articles Rs.14050 Seized on 20.8.02	Mobile Phone Spectacles Mobile Phone Rs.8500

5.	Ahmedabad 138/2002 10.7.2002 Seized on 20.8.02	-do-	Mobile Phone Rs.9000	Mobile Phone Rs.9000
6.	Ahmedabad 162/2002 5.8.2002	-do	Airbag, chain, silver coins and other articles Rs.765 Seized on 20.8.02	Silver Airbag, Silver chain clothes,

3. The reading of the above table clearly indicates that the present petitioner was arrested for the first time on 20th August 2002 and on that day he was held responsible by investigating agency for all the offences mentioned in the table. Of course, the detaining authority has also considered the statement recorded by the same machinery wherein it is contended that the petitioner is a habitual offender and his involvement in theft cases committed qua the passengers travelling by railway train.

4. While arguing on behalf of the detenu, Ms.D.R.Kachhavah has mainly concentrated on two points. Firstly, it is submitted that even for the sake of argument, if it is accepted that the petitioner is involved in all offences, even then his activities cannot be said to be dangerous to the public order, but at the most it can be said to be prejudicial to the maintenance of law and order and the subjective satisfaction recorded by the authority suffers from this important infirmity. The second point submitted by her is that the powers exercised by the authority is nothing but mechanical exercise. This should be considered in light of the statement verified by the authority and the date of detention. She has also submitted that this Court has allowed the petition of a detenu who was allegedly found involved in eight different offences of similar type. So, on the parity also, the petitioner should be set at liberty. She placed reliance on the decision given by this Court while dealing Special Civil Application No. 2175 of 2003. The say of the learned counsel is accepted without going into further discussions and dealing with the other grounds mentioned in the memo of petition. This petition can be allowed and, therefore, allowed.

5. In the result, this petition is allowed. the impugned order of detention dated 3rd September, 2002

passed by the Police Commissioner, Ahmedbad City is hereby quashed and set aside. The petitioner detenu- Rameshbhai Mohanbhai Marwadi is set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K.Buch,J)

Jayanti*